Editor's Note: Overruled to the extent of any conflict with Heirs of George Brown, 143 IBLA 221 (1988).

STATE OF ALASKA (HEIRS OF PETER WISE)

IBLA 91-138 Decided July 27, 1994

Appeal from a decision of the Alaska State Office, Bureau of Land Management, reinstating Native allotment application F-25306.

Affirmed.

1. Alaska: Land Grants and Selections--Alaska National Interest Lands Conservation Act: Native Allotments

A Native allotment application rejected because of a land description error was properly reinstated to allow the description to be corrected by heirs of the applicant.

APPEARANCES: John T. Baker, Esq., Department of Law, Anchorage, Alaska, for the State of Alaska; James J. Davis, Jr., Esq., Alaska Legal Services Cor-poration, for the heirs of Peter Wise; Dennis Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The State of Alaska has appealed a December 18, 1990, decision of the Alaska State Office, Bureau of Land Management (BLM), that reinstated an application by Peter Wise (F-25306), now deceased, to receive land under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed but with a savings clause, 43 U.S.C. § 1617 (1988). In reinstating the application, BLM rejected a protest against reinstatement filed by the State. The decision here under review was also sent to Kuskokwim Corporation and Calista Corporation because the allotment might encroach onto land to which they hold title. Neither Native corporation appealed the decision.

Wise filed an application containing a sketch map and a metes and bounds description with BLM on April 19, 1960. By decision dated August 17, 1960, BLM notified him that his application was held for rejection because the metes and bounds description of land did not close and could not be plotted on BLM maps. 1/ BLM allowed Wise 30 days following receipt of the

1/ The description stated:
"Beginning at a point on the meander line on the left bank of a south-erly channel of the Kuskokwim River approximately 35 miles northeasterly

decision to provide an amended description or, if none were provided, stated that the application would be rejected without further notice. The decision also recited that it would become final 30 days from receipt unless appealed. A return receipt card shows that Wise received the decision on September 29, 1960. Neither an amended description nor an appeal was filed and the case was closed. In 1987 the land was tentatively approved for transfer to the State.

The State of Alaska argues that reinstatement is barred by the doctrine of administrative finality (Statement of Reasons (SOR) at 4-7).
The State also argues that because the application was legally deficient, Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976) does not require a hearing (SOR at 7-11).

An answer to the State filed by two heirs of Wise contends, however, that the original land description and attached map were adequate to describe the allotment claimed by Wise under provision of 43 CFR 2561.1 requiring that unsurveyed land need only be described "as accurately as possible," and that the allotment was therefore legislatively approved under provision of section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 905(a) (1988). It is also suggested that an attempt to amend the property description for the Wise application may have put BLM on notice of the exact description intended by
the claimant. Exhibit A of the Answer is a copy of an undated corrected land description. It is described as "file stamped 19 August 1960" (Answer at 2). No such document appears, however, in the official case file. Counsel for the heirs also suggests that BLM could and should have corrected the Wise description because it contained an error that was "simple and obvious" given the need to form the claim in the boxlike shape shown on the sketch map. Id.

The narrow question immediately presented by this appeal is whether BLM properly reinstated the Wise application.

[1] Although the 1960 BLM decision became final when it was not appealed, there is an exception to the doctrine of administrative finality in Native allotment cases; applications that were rejected before December 18, 1971, without a hearing on a disputed question of fact
relied upon for rejection, are considered to have been pending before the Department on December 18, 1971, for purposes of section 905(a) of ANILCA, 43 U.S.C. § 1634(a) (1988). See Ellen Frank, 124 IBLA 349, 351 (1992),

fn. 1 (continued)
of the village of Tuluksak, Alaska, at approximate Latitude 61°28'47" North, Longitude 159°17'07" West; thence South 44° West 1/2 mile; thence South 46° West 1/2 mile; thence North 44° East to an intersection with the meander line on the left bank of said southerly channel of the Kuskokwim River; thence northwesterly with said meander line to the point of beginning,
as shown on the attached map. (Russian Mission)"

and authorities cited therein. In this case the disputed question concerns whether Wise wanted the land claimed to have been used and occupied by him in his application, as his heirs contend he did. His application was therefore subject to the provisions of section 905(a) of ANILCA and was properly reinstated. Id. But while the application was properly reinstated, it
was not legislatively approved, although counsel for the heirs suggests otherwise.

When the State selected the land in 1977, Departmental records no longer showed that any claim by Peter Wise existed. There was therefore
no means whereby the allotment could be identified on Departmental records. Since ANILCA not only approved Native allotment applications but also confirmed State selections (see 43 U.S.C. § 1635(c)(4) (1988)), a finding

that the allotment application was legislatively approved, while tentative approval of the State's section was a nullity, would pose problems of statutory construction and also raise due process questions. See Atkins v. Bureau of Land Management, 116 IBLA 305, 313-14 (1990).

The record before us contains an amended description for the Wise application; ANILCA provides that an "applicant may amend the land description contained in his or her application if said description designates
land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed." 43 U.S.C. § 1634(c) (1988); see Joash Tukle, 86 IBLA 26 (1985), aff'd, Tukle v. Hodel, No. 85-373 (D. Alaska Apr. 7, 1987). The right to amend may be exercised by an applicant's heirs, who must show that the amendment describes the land the applicant used and occupied. Mary Olympic, 615 F. Supp. 990, 995 (D. Alaska 1985); Alyeska Pipeline Service Co., 127 IBLA 156, 160-61 (1993). In this case, however, the documents supporting the application for reinstatement of the Wise application show neither that the amended description appearing in the case file was filed by Peter Wise's heirs nor that it designates the land he originally intended to claim. Upon return of the case file, BLM must therefore allow the heirs to submit documentation showing their succession to the claim made by Peter Wise and permit them to file an amended land description and offer evidence that it describes the land Peter Wise originally intended to claim.

While conceding that there was an error in the land description, counsel for the heirs argues that amendment is not needed because the error was obvious and consisted of writing southwest instead of southeast in the second call. Although this was possibly the error that prevented BLM from making a plot of the claim on Departmental maps, there is nothing in the record to establish that it was. In addition, as a handwritten note on BLM's letter acknowledging receipt of the application indicates, the latitude and longitude provided in the description place the allotment in T. 16 N., R. 56 W., Seward Meridian, rather than R. 61 W. as has been assumed to be its location. On the record before us therefore, BLM should not have unilaterally changed the description. The proper procedure was to contact the applicant to obtain a correct description.

It is therefore concluded that the allotment application of Peter Wise was correctly reinstated and must be adjudicated. 2/ While an amended land description has been filed with BLM, it was not furnished by Peter Wise or his heirs in conformity to ANILCA section 905(c). Before adjudication can proceed, the surviving heirs of Peter Wise must be identified according
to regular Departmental practice in such matters and allowed to file a land description amendment pursuant to ANILCA section 905(c).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of December 18, 1990, is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

2/ It is noted that review of the mineral character of the land has not been completed. By memorandum to the Chief of the Branch of Mineral Assessment, dated Aug. 30, 1988, BLM requested a report on the character of the land for leasable minerals. On Sept. 15, 1988, the chief responded that available information indicated the land was valuable for oil and gas. In addition, he stated that "[q]uestions regarding information on locatable minerals should be directed to the ADM for Mineral Resources." There is no report in the case file concerning the value of the land for locatable minerals.